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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 589

LOREN L. LANDMAN, et al., *Appellants*,

v.

ROBERT MIEDZINSKI, Sheriff of St. Mary's County, *et al.*, *Appellees*.

On Appeal From the Court of Appeals for the State of Maryland

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from a judgment of the Court of Appeals of Maryland entered on October 15, 1958, reversing a decree of the Circuit Court for St. Mary's County entered on July 21, 1958, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The opinions of the Court of Appeals of Maryland and of the Circuit Court for St. Mary's County are unreported. Copies of both opinions and of the final judgment herein are attached hereto as Appendix A.

JURISDICTION

Appellants sued for a determination of invalidity of Chapter 18 of the Acts of Mayland of 1958 and for an injunction to prevent the appellees, acting under that statute, from interfering with the appellants' business. The asserted ground of invalidity was, *inter alia*, that the statute violates the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals of Maryland sustained the validity of the statute against the claim that it was repugnant to the Constitution of the United States. The said court entered its judgment on October 15, 1958, and directed the clerk of the Court to transmit the mandate forthwith * * * for the passage of a decree declaring Chapter 18 to be constitutional and valid; thereafter the Circuit Court pursuant thereto entered the decree provided for which said decree was filed October 30th 1958. A notice of appeal was filed in that Court on December 11, 1958.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1257 (2) and 2101(c). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal: *Bryant* v. *Zimmerman*, 278 U.S. 63; *Standard Oil Company of California* v. *Johnson*, 316 U.S. 481; *Charleston Federal Savings and Loan Association* v. *Alderson*, 324 U.S. 182; *McCollum* v. *Board of Edu-*

cation; 333 U.S. 203; *Atchison, T. & S. F. R. Co.* v. *Public Utilities Commission of California,* 346 U.S. 346.

STATUTES INVOLVED

Chapter 18 of the Acts of Maryland of 1958, alleged herein to be invalid, is set forth in Appendix B. Also set forth in Appendix B are the following related statutes, the validity of which, however, is not here questioned:

Annotated Code of Maryland, Article 27, Section 237;

Chapters 181 and 183 of the Acts of Maryland of 1951.

QUESTION PRESENTED

Whether Chapter 18 of the Acts of Maryland of 1958 (hereinafter referred to as "the 1958 statute") is invalid for repugnancy to the Fourteenth Amendment to the Constitution of the United States because:

(1) it denies appellants the equal protection of the law by discriminating against them arbitrarily and without reasonable basis; and

(2) without due process of law, it deprives appellants of their liberty to engage in a lawful business and destroys the property they have invested in that business.

STATEMENT OF THE CASE

The appellants are engaged in the restaurant, tavern and amusement business. Each appellant owns and operates an establishment located on the waters of the Potomac River within the boundaries of the State of Maryland. Appellant Landman's establishment is in

St. Mary's County; those of the other appellants in Charles County. The various establishments are built upon piers extending into the river from the Virginia side, with the exception of one, that of appellant Freestone Amusement Company, which is on a vessel moored to such a pier. Each appellant, for several years past, has held licenses from the proper county authorities, issued pursuant to Chapters 181 and 183 of the Acts of Maryland of 1951, authorizing the operation and maintenance of coin-operated gaming devices. The current licenses run through April 30, 1959. The appellants have invested a total of about a million dollars in building and equipping their establishments and have paid to the respective county authorities a total of $85,350.00 for their current licenses. The revenues the appellants derive from the licensed gaming devices are indispensable to the profitable operation of their businesses. Without such revenues they would be forced out of business, thereby losing substantially all of their investments.

The 1958 statute made it a misdemeanor punishable by fine or imprisonment or both to maintain coin-operated gaming devices on any structure built upon or over any of the waters of the state which structure "cannot be entered from the shore of the State of Maryland by a person on foot." The appellees, the sheriffs of the respective counties, intended to enforce this statute on its effective date, June 1, 1958.

Therefore, on May 21, 1958, the appellants brought suit in the Circuit Court for St. Mary's County seeking (1) a declaration of invalidity of the 1958 statute under the Fourteenth Amendment to the Constitution of the United States as well as under the Maryland

constitution, and (2) an injunction to prevent appellees from interfereing with appellants' business.

The Circuit Court, by its opinion of July 9, 1958, and decree of July 21, 1958, held the 1958 statute invalid under the Maryland constitution, though not under the Constitution of the United States, and issued a permanent injunction against its enforcement. The appellees appealed to the Court of Appeals of Maryland, which, on October 15, 1958, reversed the judgment of the Circuit Court, holding the 1958 statute valid under both the federal and state constitutions. This appeal followed.

How the Federal Question Is Presented

The complaint alleged, among other grounds of invalidity, that the 1958 statute violates the Fourteenth Amendment to the constitution of the United States. It alleged that the statute violates the equal protection clause because it discriminates against the appellants without proper classification. (Complaint, para. 23; R. 31). It also invoked the due process clause by alleging that the enforcement of the statute would deprive them of their rights to engage in a lawful, licensed business (*id.*, para. 20; R. 30, 31) and would render their "property, premises and business . . . largely valueless" (*id.*, para. 25-b; R. 31, 32) and that the statute was invalid for ambiguity.[1] (*Id.*, para. 24; R. 31). The cause was submitted for decision under a stipulation that the facts alleged in the complaint, as recounted in this statement of the case, were to be taken as true. The Circuit Court, though holding the statute invalid under the Maryland constitution, sus-

[1] For further discussion of the presentation of the due process question see the following section of this Jurisdictional Statement.

tained its validity against attack under the United States Constitution. The Court of Appeals held the statute valid under both constitutions. The federal question is therefore properly before this Court.

THE QUESTIONS ARE SUBSTANTIAL

The issues involved in this appeal are substantial in that, if the judgment that the 1958 statute is valid is allowed to stand, appellants' business will have been destroyed in violation of rights guaranteed to them under the Fourteenth Amendment to the Constitution of the United States. The questions here presented are important, moreover, to the extent that they bear upon this Court's role in determining the validity of state statutes.

Prior to the enactment of the 1958 statute here in controversy, all forms of gambling were prohibited in Maryland (Annotated Code of Maryland, Art. 27, Sec. 237 [1957]), except in four counties where certain forms of gambling, including the gaming devices here involved, were lawful if licensed by appropriate county authorities. The four counties thus excepted from the otherwise general public policy against gambling are:

> Anne Arundel, by Chapter 321 of the Acts of 1943;
> St. Mary's by Chapter 181 of the Acts of 1951;
> Charles, by Chapter 183 of the Acts of 1951; and
> Calvert, by Chapter 184 of the Acts of 1951.

The substantial businesses of the appellants, having been duly licensed by the appropriate authorities of Charles and St. Mary's Counties, are admitted to have been lawful, but for the effect of the 1958 statute. (Answer, para. 4; R. 54). The 1958 statute, further regulating the manner in which "coin operated gam-

bling machine[s] or device[s]" may be operated in the counties where such business is lawful, is an attempt by the state to classify between those who may continue in that business in those counties and those who may not.

It is well settled that a classification which is arbitrary offends the constitutional guaranty of equal protection of the laws. *Smith* v. *Cahoon*, 283 U.S. 553; *Hartford Steam Boiler Inspection & Insurance Co.* v. *Harrison*, 301 U.S. 459, 462; *Skinner* v. *Oklahoma*, 316 U.S. 535. The classification, to be valid, must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Magoun* v. *Illinois Trust and Savings Bank*, 170 U.S. 283; *Colgate* v. *Harvey*, 296 U.S. 404, 422, 423; *Morey* v. *Doud*, 354 U.S. 457.

The first question, then, in the instant case, is whether the fact that appellants' establishments, which are built over the waters of the State of Maryland, "cannot be entered from the shore of the State of Maryland by a person on foot", while similar establishments, built over the same waters in the same counties of Maryland, can be entered from the shore of Maryland by a person on foot, is a ground of difference having such a fair and substantial relation to some legitimate legislative objective as to authorize depriving the appellants of rights accorded to proprietors of those similar establishments.

The Circuit Court suggested in its opinion:

> The fact that the latter locations [those of the appellants, on the Virginia side of the Potomac River] are more difficult to police or that they

> infringe upon the policies of the neighboring Commonwealth of Virginia would seem to afford an adequate basis for different classification. Appendix, p. 4a).

The Court of Appeals agreed with this suggestion and added that the 1958 statute "was adopted chiefly for reasons of comity." (Appendix, p. 16a). But there is no evidence that the legislature entertained either of those objectives.

First, with regard to difficulty of policing, it has never been suggested, and nothing in this record suggests, that appellants' businesses ever gave rise to any special police problems. There is no reason to believe that their establishments ever required any more or any different policing than that given other business enterprises throughout the state. Nor could anyone suggest that elimination of the licensed gaming devices will make it possible to discontinue policing of those portions of the state where appellants' establishments are located. In *O'Connor* v. *City of Moscow*, 69 Idaho 37, 202 P. 2nd 401 (1949), an ordinance made it unlawful to operate, except in a certain section of the city, any new establishment where beer or liquor was sold by the drink or where certain types of gambling were maintained (including coin-operated gaming devices). The asserted justification of the ordinance was, among other things, that it facilitated policing. Holding the ordinance unconstitutional as sought to be applied to a transfer of ownership of an existing establishment in an unsanctioned section of the city, the Supreme Court of Idaho said (69 Idaho at 44, 202 P. 2nd at 405):

> Treating the ordinance as a pure police measure, designed, as expressed therein, to make easier

> the policing and health inspections of such businesses, and to prevent loitering and nuisances, we are of the opinion that the provision complained of is not a reasonable exercise of the police power and does not bear any reasonable, real or direct relationship, to the objects and purposes sought to be accomplished. Existing businesses under the same ownership are permitted to remain. Policing and health inspections and the prevention of loitering and nuisances are therefore not actually made easier, since the city authorities must continue to police and and inspect businesses in the same area as before.

Similarly here, since it would still be necessary, even with the licensed gaming devices eliminated, for state or county officers to visit appellants' establishment from time to time for general policing purposes, whether by boat or by automobile over Virginia roads, it is the sheerest of fictions to say that the 1958 statute was designed to facilitate policing.

Moreover, discussing the absolutely illogical premise that access by foot from the shore of Maryland is the test of policing facility, it is obvious from the statute that the achievement of such facility was not the objective. For example, one of the appellants could rebuild his business upon a pier extending from one of the islands in Chesapeake Bay which is within either Anne Arundel or Calvert County. He could ferry his customers to and from the island by boats connecting with the mainland. Since the island would be Maryland soil and since a person could go from it on foot into appellant's establishment, the 1958 statute would not be violated. Yet, if access by a person on foot is the test of policing facility, it is obvious that this island establishment would be impossible to reach

from the mainland of Maryland, whence, presumably the policing would be done. By contrast, the piers on which the present establishments are built are within practical reach by road without the necessity of employing boats. In view of the fact that the statute permits operations which are harder to police than those it prohibits, it is impossible to infer from the statute that its object is to facilitate policing. The attempted distinction between the few steps a policing official must take from the Virginia side of the river and the few steps he must take from the Maryland side in order to enter a pier wholly within Maryland waters is truly a distinction without a difference.

The contention that protection of an alleged Virginia policy was the object of the 1958 statute is equally impossible to sustain. Whatever doubt there might otherwise be as to this point is removed by the construction which the state courts have placed upon the statute. To save the statute against appellants' contention that it was void for ambiguity,[1] both of the courts below construed it to apply to any establishment located on any body of water within the territorial jurisdiction of Maryland if it could not be entered on food from the shore of Maryland.[2] It thus forbids the operation of an establishment, far removed from the Virginia border, on a barge moored in the middle of a lake or pond within any of the four counties where such business is recognized as lawful. It also forbids appellant Freestone Amusement Com-

[2] If the construction placed upon the statute by the courts below is taken as binding upon this Court, appellants concede that the statute is not void for ambiguity and, therefore, do not here press the third part of the question presented as stated in their notice of appeal. They submit, however, that, so construed, it is even more clearly violative of their rights under the Fourteenth Amendment.

pany, which operates its business on a vessel moored to a pier extending from the right bank of the Potomac, to move its vessel into the waters of Chesapeake Bay off the coast of Calvert County or Anne Arundel County and anchor it there, using boats to carry its customers from the mainland. Thus situated, perhaps fifty or seventy-five miles from Virginia, Freestone could obviously not impinge in any way upon any interest of that state. Yet, since the vessel could not be entered from the shore of Maryland by a person on foot, this operation would be prohibited by the 1958 statute. It is therefore impossible to infer from the statute that its object was to prevent impingement upon any alleged Virginia anti-gambling policy.

The foregoing argument, we submit, demonstrates that the objectives of the 1958 statute could not have been those attributed to it, on the basis of assumptions, by the Courts below. Even if there were some legislative declaration or history or other extrinsic evidence to show that those were the statutory objectives (and the record contains no such extrinsic evidence), our argument demonstrates, at the very least, that the two alleged objectives *cannot be inferred from the statute itself*, because the statute (1) permits some operations that are more difficult to police than those it prohibits, and (2) prohibits operations that could not possibly affect the interests of Virginia.

This latter proposition is most important, because the lower courts' attribution of the two objectives to the statute was based on nothing more than *assumption*. The record contains not a single syllable of evidence to indicate that those were the statutory objectives. While a state may, upon any reasonable basis, discriminate between persons in the exercise of

its police power, this Court has made it clear that it is not the function of the judiciary "to conjure up possible situations which might justify the discrimination." *Mayflower Farms, Inc.* v. *Ten Eyck*, 297 U.S. 266, 274.

As Chief Justice Hughes said in *Borden's Farm Products Co.* v. *Baldwin*, 293 U.S. 194, 210:

> [I]t is increasingly important that when it becomes necessary for the Court to deal with the facts relating to particular commercial or industrial conditions, they should be presented concretely with appropriate determinations upon evidence, so that conclusions shall not be reached without adequate factual support.

Since the record in this case reveals no "adequate factual support" for the basis of discrimination suggested by the lower courts, those courts, could only have acted upon assumptions or by exceeding the permissible scope of judicial notice. The object of this statute, so far as revealed by the statute itself and by anything in the record, is neither more or less than to prohibit the operation of coin-operated gaming devices in establishments built on or over some parts of Maryland's waters, while permitting similar establishments built on or over other parts of those waters; thus severely impairing the earning capacity of the former establishments to the obvious advantage of the latter. By permitting four counties to license business of the type conducted by the appellants the state has recognized that in those counties such business does not impair the public health, safety and morals. The state may not, therefore, within those four counties, forbid the operations of some entrepreneurs, while permitting the similar operations of others. *Fairchild*

v. *Schanke*, 232 Ind. 480, 113 N.E. 2nd 159 (1953). The 1958 statute, by arbitrarily discriminating between classes of entrepreneurs within those four counties, without any basis related to a concern for the public health, safety or morals, violates the constitutional guaranty of equal protection of the laws.

The applicable principle of law is well expressed by the Supreme Court of Indiana in *Fairchild* v. *Schanke*, *supra*, 232 Ind. at 487, 113 N.E. 2d at 162-63, quoting from its opinion in another case:

> The legislature may make a classification for legislative purposes, but it must have some reasonable basis upon which to stand. It is evident that differences which would serve for a classification for some purposes would furnish no reason for a classification for legislative purposes. Such legislation must not only operate equally upon all within the class, but the classification must furnish a reason for and justify the making of the class; that is, the reason for the classification must inhere in the subject-matter, and rest upon some reason which is natural and substantial, and not artificial. Not only must the classification treat all brought under its influence alike, under the same conditions, but it must embrace all within the class to which it is naturally related. Neither mere isolation nor arbitrary selection is proper classification. (Citing numerous authorities).

Since, as we have shown, the statute may operate in ways bearing no relation to the objectives attributed to it by the lower courts and since there is nothing in the record to show any objective, other than the naked purpose to make an arbitrary discrimination, to which this classification could be said to be fairly and substantially related, the Court of Appeals committed error in volunteering its two assumptions as the statu-

tory objectives. *Mayflower Farms, Inc.* v. *Ten Eyck, supra;* cf. *Borden's Farm Products Co.* v. *Baldwin, supra; United States* v. *Carolene Products Co.*, 304 U.S. 144.

The 1958 statute, in addition to denying the appellants the equal protection of the laws guaranteed them by the Fourteenth Amendment, violates their rights under the due process clause of that Amendment.

As we have shown in the preceding section of this Jurisdictional Statement, the due process question was raised below by the appellants through the allegations in their complaint that enforcement of the statute would deprive them of their rights to engage in a lawful licensed business, that it would render their "property, premises and business . . . largely valueless", and that the statute was invalid for ambiguity. That the complaint did not *in haec verba* refer to the due process clause is of no consequence, for, as this Court said in *Bryant* v. *Zimmerman*, 278 U.S. 63, 67:

> There are various ways in which the validity of a state statute may be drawn in question on the ground that it is repugnant to the Constitution of the United States. No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented.

See also *Braniff Airways, Inc.* v. *Nebraska State Board*, 347 U.S. 590, 598-599; Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States* (Wolfson and Kurland ed. 1951) § 85.

Moreover, we submit, the due process question was inherent in the context in which the equal protection question was presented and argued. This Court said in *Truax* v. *Corrigan*, 257 U.S. 312, 332, 333:

> It [the due process clause], of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general, fundamental principle of equality of application of the law.
>
> * * *
>
> Mr. Justice Matthews, in *Yick Wo* v. *Hopkins*, 118 U.S. 356, 369, speaking for the court of both the due process and the equality clause of the Fourteenth Amendment, said: "These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; *and the equal protection of the laws is a pledge of the protection of equal laws.*"

And in *Reagan* v. *Farmers Loan and Trust Co.*, 154 U.S. 362, 399, the Court said:

> The equal protection of the laws which, by the Fourteenth Amendment, no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of another, or of the public.

See also *Smith* v. *Texas*, 233 U.S. 630, 636, in which the Court said:

> Life, liberty, property and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any of those

> separate and independent rights may lessen or extinguish the value of the other three. In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work.

Paraphrasing the above language from *Smith* v. *Texas,* in so far as these appellants are deprived of the right to engage in their lawful business, their liberty is restricted, their capacity to earn profits and acquire property is lessened, and they are denied the protection which the law affords those who are permitted to engage in that business. Moreover, there is a taking here of property they have already invested in their lawful business. Such a taking, without adequate compensation, is not sanctioned by law. *Seattle Title Trust Co.* v. *Roberge,* 278 U.S. 116; *Truax* v. *Corrigan, supra.*

The 1958 statute is not unlike a zoning ordinance which, on a theory of fire or disease hazard, forbids a certain use of property in one district, while permitting that use in another, similar district. Such a zoning ordinance deprives the restricted owner of his property without due process of law. *Applestein* v. *Baltimore,* 156 Md. 40, 143 Atl. 666 (1928).

Zoning, moreover, though a well recognized exercise of police power, may not work retroactively to prohibit a lawful use to which property has been put. *Dobbins* v. *Los Angeles,* 195 U.S. 223. This doctrine of nonconforming use is recognized both by the legislature and the courts of Maryland. See, for example, *Schiff* v. *Board,* 207 Md. 365, 114 A. 2nd 644 (1955); *Beyer* v. *Baltimore,* 182 Md. 444, 34 A. 2nd 765 (1943); *Landay*

v. *Board of Zoning Appeals*, 173 Md. 460, 196 Atl. 293, 114 A.L.R. 984 (1938).

A splendid discussion of the effect of zoning laws on a lawful business is found in *Jones* v. *The City of Los Angeles*, 211 Cal. 304, 295 Pac. 14 (1931). In concluding its opinion the Supreme Court of California said (211 Cal. at 321, 295 Pac. at 22):

> Our conclusion is that where, as here, a retroactive ordinance causes substantial injury and the prohibited business is not a nuisance, the ordinance is to that extent an unreasonable and unjustifiable exercise of police power.

The reported case closest to the instant case, both in fact and in law, is *O'Connor* v. *The City of Moscow*, 69 Idaho 37, 202 P. 2nd 401 (1949). There the City of Moscow passed legislation making it unlawful to open or operate in a certain area any new or additional businesses in which any pool, billiard, card or dice game is played, or draft beer or liquor is sold by the drink, or coin-operated gaming devices are maintained. It was further provided that "Any change of ownership of an existing business of the type herein defined shall be deemed a new or additional business."

According to the opinion: "The express purpose of the ordinance is to confine such businesses to a limited area in order to make policing thereof easier and to promote the peace, morals, safety and general welfare of the people of Moscow". 69 Idaho at 40, 202 P. 2nd at 402.

Respondent's attempt to sell his business in the restricted area was prevented by the application of the provision of the ordinance above quoted. He brought his action to have the ordinance declared void and, upon stipulated facts substantially as above, the trial

court declared the quoted part of the ordinance void and enjoined its enforcement. The City of Moscow appealed. The court declared (69 Idaho at 40-41, 202 P. 2nd at 402):

> So long as appellant permits the operation of such businesses, by licenses and other regulations, they must for the purposes of this case be treated as any other lawful businesses.

The Court held (69 Idaho at 43, 44, 202 P. 2nd at 404, 405):

> Since lawful existing uses, although non-conforming, cannot be constitutionally eradicated because by so doing, the due process clauses are violated, it naturally follows in one logical step that the prevention of the sale of an existing business by such an ordinance has the same result. . . .
>
> * * *
>
> Treating the ordinance as a pure police measure, designed, as expressed therein, to make easier the policing and health inspection of such businesses, and to prevent loitering and nuisances, we are of the opinion that the provision complained of is not a reasonable exercise of the police power and does not bear any reasonable, real or direct relationship, to the objects and purposes sought to be accomplished. Existing businesses under the same ownership are permitted to remain. Policing and health inspections and the prevention of loitering and nuisances are therefore not actually made easier, since the city authorities must continue to police and inspect businesses in the same area as before.

CONCLUSION

It is submitted that Chapter 18 of the Acts of Maryland of 1958 violates the Fourteenth Amendment to the Constitution of the United States in that it denies to the appellants the equal protection of the laws and, without due process of law, deprives them of their liberty to engage in a lawful business and destroys the value of the property they have invested in that business.

Respectfully submitted,

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APPENDIX

APPENDIX

A. OPINIONS BELOW AND JUDGMENT OF COURT OF APPEALS

1. Opinion of Circuit Court for St. Mary's County

Opinion

(Filed July 9, 1958)

This suit was instituted by the plaintiffs to test the validity of Chapter 18 of the Acts of the "short" 1958 session of the General Assembly. The plaintiffs are owners and operators of business establishments constructed on wharves or piers extending from the Virginia shore out into the Potomac River, except as to one plaintiff who owns and operates a similar establishment on a vessel moored in the Potomac. The defendants are the Sheriffs of St. Mary's and Charles Counties respectively. The plaintiffs seek a declaratory decree to determine the validity of said act and to have an injunction to restrain the defendants and other law enforcement agencies from interfering with them in the operation of gaming devices, commonly known as slot machines, in their respective establishments in pursuance of licenses issued pursuant to the local laws of St. Mary's and Charles Counties respectively. The defendants have demurred to the bill but at the hearing of this cause the counsel for the respective parties agreed that the case be heard and determined upon its merits. A stipulation was filed in which the parties admitted the facts alleged in the Bill of Complaint.

The parties concede that the only question raised for determination in the case is the validity of Chapter 18 passed at the "short" session of 1958. The plaintiffs attack the validity of this act upon three grounds: (a) that the act is in violation of the equal protection clause of the fourteenth amendment of the Constitution of the United States; (b) that the act is in violation of the United States Constitution and Article 23 of the Maryland Declaration of Rights, because it is ambiguous and vague and does not

properly inform the plaintiffs of the crimes sought to be punished by the act and; (c) that the act was passed in violation of the restrictions imposed by Section 15 of Article 3 of the Maryland Constitution which limits the measures which may be considered by the "short" session of the General Assembly to three categories and it is claimed by the plaintiffs that this act does not fall in either such category.

It is apparent that this litigation is yet another phase of the troubled relations between the State of Maryland and the Commonwealth of Virginia growing out of the boundary line between the two States. The original grant to Maryland extended to the far shore of the Potomac River. Many questions between the two States were unresolved before the formation of the Union, and an attempt was made in the Compact of 1785 to solve some of the problems. Fnally the actual boundary line between the two States was established by agreement at low water mark on the Virginia side of the Potomac River and by surveyed lines between headlands. So far as the plaintiffs are concerned it is definitely established that while their piers extend across the low water mark to the Virginia shore, their places of business, including the areas where they operate their slot machines, are built over the navigable water belonging to the State of Maryland and located in St. Mary's and Charles Counties respectively. The laws of the Commonwealth of Virginia do not permit the operation of the gaming devices which are lawful when properly licensed in both Charles and St. Mary's Counties. Nor do the Virginia laws permit the sale of alcoholic beverages by the drink in restaurants or taverns as do the Statutes of Maryland. Because the plaintiffs' piers are adjacent to Virginia and readily accessible from its shore line, the plaintiffs' establishments are patronized by Virginia residents or others who come from the Commonwealth. This patronage has apparently been considerable for the plaintiffs have invested large sums in their respective business

establishments. While it is apparent that many Virginians are not adverse to patronizing the more liberal Maryland establishments, there is substantial sentiment in Virginia opposing the conduct of places of business adjacent to the Virginia shore which permit amusements not tolerated on the Virginia shore. The Governor of Virginia has appealed to Governor McKeldin to sponsor legislation calculated to bring the Maryland establishments adjacent to the Virginia shore in line with the requirements of Virginia law.

The Governor of Maryland announced that he would honor the request of the Virginia authorities and recommend to the General Assembly that the licensing of slot machines adjacent to the Virginia shore be not allowed. It was to implement this commitment to Virginia that the Chapter 18 was introduced in the Maryland General Assembly. Instead of directly replacing or modifying Chapter 181 and Chapter 183 of the Acts of 1951, which legalized slot machines in St. Mary's County and Charles County, respectively, the legislation was passed in the form of a public general law applicable to the entire State. This was obviously done because; (a) a local law could not be considered at the "short" session and (b) an attempt to repeal or modify a local statute might have been more difficult to pass.

Denial of Equal Protection

It is contended on behalf of the plaintiffs that the act violates the equal protection clause of the fourteenth amendment of the Federal Constitution. Because the effect of the act is to deny to the plaintiffs their right under the license laws of Charles County to operate slot machines whereas all other persons in Charles County who are licensed may continue in their business. The Court is unable to agree with this theory. A state may lawfully legislate and draw distinction between different categories or classifications. See *Salisbury* v. *State,* 211 Md. 212 as to

the State's right to make reasonable classifications. The Court thinks the legislature could as it did draw a distinction between places of business on the main land of Charles and St. Mary's Counties or on wharves adjacent thereto, on the one hand, and piers on the opposite side of the river which are adjacent to the Virginia Shore, on the other. The fact that the latter locations are more difficult to police or that they infringe upon the policies of the neighboring Commonwealth of Virginia would seem to afford an adequate basis for different classification.

AMBIGUOUS LANGUAGE OF THE ACT

The plaintiffs claim that the act violates the fourteenth amendment of the Federal Constitution and Article 23 of the Maryland Declaration of Rights because the language of the act is too uncertain and vague. This contention is predicated upon the provision in the statute prohibiting the operation of a gaming device on any pier or vessel which cannot be reached on foot from the Maryland shore. The plaintiffs raise the question of whether their establishments meet this test because a pedestrian can enter a boat on foot from the Maryland shore, be transported across the Potomac to a plaintiff's establishment, which he can then enter by foot. They further contend that the test in the Statute is met by a person who may walk from the low water mark on the Virginia side of the Potomac and into the plaintiff's places of business. The Court has no difficulty in holding that the Statute should be construed to prohibit the operation of gambling devices on a vessel or a pier unless it is located adjacent to the Maryland shore in such manner that a person may walk from Maryland territory into the licensed premises. In this connection we think the word shore means "the land bordering a body of water" and refers to the general shore line of Maryland as distinguished from any technical use of the word to denote the area between high and low water mark or the line separating privately owned land from that covered by navigable water.

AUTHORITY OF THE "SHORT" SESSION

The real question presented in this case, as we see it, is the power of the legislature to pass the statute in question at its "short" session of 1958. It is claimed on behalf of the plaintiffs that the act is in fact applicable only to a small part of the State, is therefore local in nature and cannot be for the "general public welfare". It is contended on behalf of the respondents, however, that the Act is State-wide in its nature and applies to all persons in the State and therefore meets the Constitutional test.

The Amendment proposed in 1947 and approved by the voters in 1948 resulted from a study of the fiscal affairs of the State by a commission headed by Judge Joseph Sherbow. This report recommended that instead of submitting biannual budgets as had theretofore been the practice the State should adopt an annual budget. This involved a Constitutional amendment to provide for the submission by the Governor of annual budgets and a session of the legislature each year so that they may give consideration thereto. The legislative council proposed that in addition to the regular ninety-day session of the General Assembly held in odd years that there be held in each even year a "short" session of thirty days. In the amendment thus submitted, there was no restriction upon the "short" session as to matters which could be considered by it. The history of the Constitutional Amendment was considered by the Court of Appeals in the case of *Funk* v. *Mullen Contracting Company*, 197 Md. 192 and on page 196 of the opinion, Court gives a rather full review of the legislative background of the Amendment. The original draft was amended to read as follows by the General Assembly:

> "In any of said thirty-day sessions in even years, The General Assembly shall consider no bills other than (1) Bills having to do with budgetary, revenue and financial matters of the State Government, (2) legislation dealing with an acute emergency, and (3) legislation in the general public welfare".

In the Funk case the Court analyzed the provisions of the amendment and commented thereon as follows:

> "It is apparent, therefore, that the main purpose of providing for 30-day sessions in the even years was to enable annual budgets to be submitted for the State Government, and that the amendment, while it did not wholly restrict these sessions to budgetary matters, did place certain restrictions upon the character of legislation which should be considered. This is a clear departure from the ordinary authority to consider in the regular 90-day session, or in any special session, all matters that might properly be brought before the General Assembly, although there are already prohibitions in the Constitution against the passage of certain laws. (See, for instance, Sec. 33 of Article II). Section 15 provides a new restriction upon the right of the legislature to pass any legislation at the short even year session except that enumerated, or, perhaps a better way to express it is to say that *it has no authority to pass any legislation at such sessions other than that enumerated*". (Emphasis supplied)

The Court concluded its discussion of this aspect of the case on page 199 as follows:

> "We conclude, therefore, that by the use of the word 'general', the Legislature means to restrict itself in these sessions to matters generally affecting the State, rather than affecting parts thereof."

The Court in the Funk case found it unnecessary to determine whether the Constitution would permit the enactment of legislation which affects a part of the State only, but might nevertheless be in the "general public welfare". The Court phrased the problem which they did not undertake to solve as follows:

"We are not required on this record to determine whether acts covering subjects of interest and importance to the entire State, and by their terms applicable thereto, might not be legislation in the general public welfare, even though their actual geographical impact is upon parts of the State only".

This case requires the Court to determine whether legislation enacted as a Statewide measure, but which has its impact only upon a limited area of the State, is nevertheless in the interest of the general public welfare within the naming of the Constitutional limitation upon the power of the General Assembly at its "short" session. The Court has the responsibility of determining whether in fact the legislation is in the "general public welfare". In the *Funk* case and in the case of *Washington Suburban Sanitary Commission* v. *Buckley,* 197 Md. 203, decided at the same time as was the *Funk* case, it was contended that the mere declaration by the General Assembly that the legislation was in the "general public welfare" or that it arose from "an acute emergency" was conclusive. There were cited the cases of *Culp* v. *Commissioners,* 154 Md. 620, *Gelhardt* v. *Hill,* 189 Md. 135, *Hammond* v. *Lancaster,* 194 Md. 462, but the Court distinguished those cases under the referendum provision of the Constitution from the cases then being considered. In the *Buckley* case the Court squarely held that the Court had the responsibility of determining whether or not "an acute emergency" existed. On page 210 the Court said:

"Sec. 15, unlike the referendum section, does not predicate any result upon the declaration of an emergency, and we think it means, as does the Baltimore City provision, that there must be an actual acute emergency to render the legislation valid, and *That this emergency is one to be determined by the Courts.*" (Emphasis supplied)

It seems to be plain that this legislation can be sustained only if the Court finds as a fact that the legislation is in the "general public welfare". Of course, the passage of the act establishes a presumption that it is valid and constitutional and the Court must give weight to the determination by the legislature that its passage was within its legislative authority. These considerations, however, are not conclusive and where the act is challenged, as in this case, the Court must determine whether the statute meets the constitutional test. We conclude that it does not. Article 27 Section 237 of the Code prohibits all gambling devices and effectually prevents the operation of the gambling devices prohibited by Chapter 18, except insofar as the Statewide gambling act has been modified by local statute. Insofar as slot machines are concerned, the Statewide anti-gambling statute has been modified by Chapter 321 of the Acts of 1943 relating to Anne Arundel County and by Chapters 181, 183 and 184 of the Acts of 1951 relating to St. Mary's, Charles, and Calvert Counties, respectively. These acts authorize the licensing of slot machines in those counties, on somewhat different terms and conditions, and modify the Statewide law to that extent. It is manifest that only in Charles and St. Mary's Counties could piers be built in such a manner as to be prohibited by the act of 1958. The Act would also prohibit the use of vessels for gambling purposes in those counties and also in Anne Arundel and Calvert Counties if the vessel could not be reached on foot from the shore. While the act of 1958 is in the form of a public general law, its sole impact is upon the local laws of Charles, St. Mary's, Anne Arundel, and Calvert Counties. It has no effect whatsoever upon the remainder of the State, for slot machines are already effectually prohibited there. It cannot be said to affect the "general public welfare" as that phrase is defined in the *Buckley* case because not only does it relate only to four counties, but it cannot affect the welfare of the rest of the State. In this situation it seems clear that the act was

passed in contravention of the constitutional limitation contained in Section 15, Article III of the Maryland Constitution and is therefore invalid.

We have considered the fact that the penalties provided for in Chapter 18 are slightly different from the penalties imposed in the Statewide anti-gambling act, but we do not regard this difference as justifying the conclusion that the act affects the entire state and comes within the definition of "general public welfare".

We have considered, too, the question of whether the attempt by the General Assembly to conform to a request by the authorities of the Commonwealth of Virginia gives this legislation any added standing. We must resolve this question in the negative. However earnest the Virginia authorities may be in their desire to prohibit to their people access to any pernicious influence of Maryland slot machines and however desirous the Executive and Legislative Branches of the government of Maryland may be to conform to the wishes of their neighbors across the Potomac, there can be no justification for deviating from plain constitutional requirements.

We conclude that the General Assembly at its "short" session transcended its power in passing Chapter 18 and that the same is therefore unconstitutional and void. A decree may be submitted not inconsistent with the views expressed in this opinion declaring said legislation to be invalid and restraining the law enforcement officers of Charles and St. Mary's Counties respectively from enforcing the provisions thereof.

JOHN B. GRAY, JR.,
Chief Judge,

PHILIP H. DORSEY, JR.,
Associate Judge

DECREE

(Filed July 21, 1958)

The proceedings in the above entitled cause having been fully considered and arguments of counsel for the parties having been heard, it is thereupon this 21st day of July, 1958, by the Circuit Court for St. Mary's County, Maryland, in Equity, ADJUDGED, ORDERED and DECREED as follows:

(1) That Chapter 18 of the Acts of the General Assembly of Maryland, Session of 1958, be and the same is hereby declared invalid and unconstitutional.

(2) That the Defendants, Robert Miedzinski, Sheriff of St. Mary's County, Maryland, and Avary C. Monroe, Sheriff of Charles County, Maryland, their successors in office and their agents, servants, employees, deputies and all other law enforcement officers be, and they are hereby enjoined permanently from either carrying out or enforcing any of the provisions of Chapter 18 of the Acts of the General Assembly of Maryland, Session of 1958, against the Plaintiffs in these proceedings.

(3) That the Defendants pay the costs of these proceedings.

/s/ JOHN B. GRAY, JR.,
Chief Judge,

PHILIP H. DORSEY, JR.
Associate Judge

2. Opinion of Court of Appeals

IN THE COURT OF APPEALS OF MARYLAND

No. 129

SEPTEMBER TERM, 1958

ROBERT MIEDINSKI, Sheriff of St. Mary's County, et al.

v.

LOREN L. LANDMAN, et al.

BRUNE, C.J., HENDERSON, HAMMOND, PRESCOTT, HORNEY, JJ.

Opinion by Henderson, J.

Filed: October 15, 1958

This appeal is from a decree of the Circuit Court for St. Mary's County filed July 21, 1958, declaring Chapter 18 of the Acts of 1958 to be unconstitutional and enjoining the appellants from enforcing the law. The bill was filed on May 21, 1958, before the Act took effect according to its terms on June 1, 1958. An answer was filed on May 28 and the case set for hearing upon bill, answer, exhibits and stipulation, on June 13, 1958. By agreement of counsel on May 29, 1958, a restraining order was signed until the case should be finally determined by the court below. We advanced the case for argument at the beginning of the new term. Neither in the lower court nor in this Court was any question raised as to the standing of the appellees to raise the questions presented by a bill in equity for a declaratory decree, and we shall assume for present purposes that they had such standing.

The principal question presented, and the question that was thought to be determinative by the court below, is whether the Act was passed in violation of the Maryland Constitution, Art. III. Sec. 15. That section, ratified November 2, 1948, provides, in part, that in the "thirty-day sessions in even years, the General Assembly shall consider no bills other than (1) Bills having to do with budgetary, revenue and financial matters of the State Government, (2) legislation dealing with an acute emergency, and (3) legislation in the general public welfare." Chapter 18 undertook to add a new section to Art. 27 of the Code, reading as follows:

"246A. (a) It shall be unlawful for any person, firm, association or corporation to bet, wage or gamble at or to keep, conduct, maintain or operate any game of chance, gaming table or coin operated gambling machine or device upon any vessel upon any of the waters within the State of Maryland, or upon any pier, wharf, building or other structure of any kind whatsoever which is built upon or over any of the waters of this State and which pier, wharf, building or other structure cannot be entered from the shore of the State of Maryland by a person on foot, and it shall further be unlawful for any person, firm, association or corporation to establish, keep, rent, use or occupy, or knowingly suffer to be established, kept, rented, used or occupied, any vessel upon any of the waters of the State of Maryland, or any pier, wharf, building or other structure of any kind whatsoever which is built upon or over any of the waters of this State and which cannot be entered from the shore of the State of Maryland by a person on foot, for the purpose of conducting, maintaining or operating any game of chance, gaming table or coin operated gambling machine or device. This Section shall prevail despite the issue of any form of license or permit granted through or by any county, municipal corporation or other political subdivision of this State. Any person, firm, association or corporation violating the pro-

visions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than Two Hundred Dollars ($200.), or more than One Thousand Dollars ($1,000.), or imprisonment not to exceed one year for each such violation or may be both fined and imprisoned in the discretion of the court.

"(b) Nothing in this Section shall be construed to authorize the doing of any act which is otherwise prohibited by law." Section 2 of the Act repealed inconsistent laws.

The complainants, appellees, are the owners and operators of taverns and restaurants located on piers or wharves extending from the Virginia shore out into the Potomac River, except that one of the complainants owns and operates a similar establishment on a vessel moored in the Potomac near the Virginia shore. The respondents are the Sheriffs of St. Mary's and Charles Counties. Each of the complainants holds a license permitting the operation of gaming devices, commonly known as slot machines, in their respective establishments, pursuant to local laws of St. Mary's and Charles Counties, respectively. These licenses purported to be valid for one year from May 1, 1958, but at the time they were obtained Chapter 18 had been passed and approved by the Governor on March 6, 1958. It is conceded that these places of business are located in the State of Maryland and in St. Mary's and Charles Counties, respectively, although access is gained by piers extending from the Commonwealth of Virginia across the State line, which was long since established at the low water mark of the river on the Virginia side. Virginia law does not permit the operation of the gaming devices which are lawful when properly licensed in St. Mary's and Charles Counties. As pointed out by the court below, the complainants' establishments are extensively patronized by Virginia residents and others who resort thereto from the Commonwealth, but there is substantial sentiment in Virginia opposing the conduct of places of business adjacent to the Virginia line which

permit gaming devices not lawful in that State. The lower court also noted that the Governor of Maryland recommended to the General Assembly the passage of the legislation in question, upon the formal request of the Governor of Virginia.

The appellees contend that although the Act in question is in the form of a public general law applicable to the entire State, its impact is wholly local, and hence it cannot be deemed to be in the "general public welfare". They strongly rely upon the case of *Funk* v. *Mullan Contracting Co.*, 197 Md. 192, where this Court invalidated Chapter 30 of the Acts of 1950 setting up a commission to fix the generally prevailing wages which were required to be paid by contractors for the construction of buildings, roads or bridges for the State. However, the Act did not repeal, but left in effect, a previous Act applicable in three counties only, where the prevailing wages in road contracts were to be those predetermined by the United States Department of Labor. The Court pointed out that Chapter 30 was therefore applicable to Baltimore City and twenty of the twenty-three counties, but in the other three, the Commission created by that Act had no authority over wages to be paid for State road work.

The Court referred to the fact that the plethora of local measures considered by the Legislature had in the past impeded the proper consideration of State-wide measures, and found that the Legislature, in using the word "general" in the new amendment, meant to restrict itself in the even-year sessions "to matters generally affecting the State, rather than affecting parts thereof." But it was also said (p. 199): "We are not required on this record to determine whether acts covering subjects of interest and importance to the entire State, and by their terms applicable thereto, might not be legislation in the general public welfare, even though their actual geographical impact is upon parts of the State only. We have here no such situation." In the light of this qualification, we

think the holding was that generality was destroyed by the fact that Chapter 30, in effect, exempted three counties from its operation, not merely by the fact that it had a limited geographical impact. This conclusion is somewhat reinforced by the statement in *Wash. Sub San. Comm.* v. *Buckley*, 197 Md. 203, 207, decided the same day, where it was said: "It cannot be successfully contended that a purely local statute, affecting only parts of two counties, and having no application, either financial or otherwise, to any other part of the State, can be in the general public welfare", and by the further statement in the *Funk* case (p. 201) that "the term 'general', as used in Sec. 35 of Article III of the Constitution, is intended to mean legislation that applies to all of the State without exception."

In the instant case Chapter 18 is in terms applicable to the entire State and no political subdivision is exempted from its operation. The fact that its geographical impact is limited by the conditions to which it applies would not seem to destroy its generality. The language of Chapter 18 that limits its application to "any vessel upon any of the waters within the State of Maryland," and to piers built "upon or over any of the waters of this State and which * * * cannot be entered from the shore of the State of Maryland by a person on foot," would seem to include all waters, whether tidal waters or lakes or ponds, which probably exist in every political subdivision in the State. We have no doubt that "shore" refers to any land mass within the State. On the other hand, it seems clear that persons crossing the Virginia line on foot on the south side of the Potomac at low water mark, would not be entering from the Maryland "shore". While the particular impact is upon those establishments located along the south side of the Potomac, its applicability is not limited to that area and it might be invoked against gambling devices on vessels or structures in any waters of the State, even if no such establishments are presently in existence.

The argument that the impact is wholly local seems to rest primarily on the fact that, except in Anne Arundel, St. Mary's, Charles and Calvert Counties, where local laws permit the operation of slot machines, gambling devices of all types are prohibited under Code (1957), Art. 27, Sec. 237. But we think the existence of another law on the subject does not preclude the passage of a new Act of somewhat different scope and carrying heavier penalties than those provided in Sec. 241. For an illustration of separate and distinct offenses covering the same or similar subject matter, see *Willis* v. *State*, 205 Md. 118, 125 and *Lyman* v. *State*, 136 Md. 40, 50, where it was held that a prosecution might lie either under the False Pretense Act or the Worthless Check Act. Whether Chapter 18 operates as a repeal *pro tanto* of some of the duplicated provisions of Section 237 is a question we need not now consider. We think a prosecution under Chapter 18 would lie in any political subdivision in which the prohibited activities are found to exist, even though the State may have a choice of remedies.

The lower court thought Chapter 18 was invalidly passed at the even-year session, not only because such activities were already prohibited in all except the four counties mentioned, but also because it did not affect the welfare of the rest of the State. But this overlooks the fact that the Act was adopted chiefly for reasons of comity. The lower court noted that the Governor of this State recommended its passage in compliance with a request by the Virginia authorities. It cannot fairly be said that the maintenance of neighborly relations with an adjoining State is not a matter of interest or concern to the entire State, and we think the action of the Legislature in adopting a measure designed to remove a source of interstate controversy or annoyance may be considered as promoting the general public welfare of the entire State. We think an Act in the nature of a compact could be passed at an even-year session, no matter how limited its actual effect

upon particular areas or persons in the State. We note that the Middle Atlantic Interstate Forest Fire Protection Compact, for example, was adopted by Chapter 126 of the Acts of 1956.

The appellees contend that the limited practical and geographical impact of Chapter 18 amounts to a discrimination against them, and that the classification is so arbitrary and unreasonable as to deny them the equal protection of the law guaranteed by the Fourteenth Amendment to the Federal Constitution. But to meet the test, an Act need not be territorially uniform. It is enough if the law applies equally to all persons similarly situated within the territory described in the Act. *Salsburg* v. *State*, 201 Md. 212, 221 (affd. 346 U.S. 545); *Barton* v. *Public Ser. Comm.*, 214 Md. 359, 363. The State has plenary power to regulate or forbid gambling, and "Reasonableness depends on the character or nature of the conditions to be met or overcome." *Maryland Racing Comm.* v. *McGee*, 212 Md. 69, 76. The appellees argue that it was unreasonable for the Legislature to draw a distinction between places of business on the mainland of St. Mary's and Charles Counties, or on piers adjacent thereto, and piers on the opposite side of the river adjacent to the Virginia shore. But we agree with the lower court that "The fact that the latter locations are more difficult to police or that they infringe upon the policies of the neighboring Commonwealth of Virginia would seem to afford an adequate basis for different classification."

The appellees contend that the language of the Act is so vague and uncertain as to violate the Fourteenth Amendment. We find it unnecessary in this case to resolve all the fancied ambiguities in the Act. "We have repeatedly held that the general rule of the construction of a statute is that every presumption favors its validity and reasonable doubt is enough to sustain. This Court is very reluctant to defeat the will of the Legislature by declaring its legislation void, if, by any construction, it can possibly

be maintained." *Hellmann* v. *Collier*, 217 Md. 93, 95. This is particularly true where, as here, the attack is general and not centered upon the application of the Act to an individual charged with a specified criminal act that might call for construction under the facts presented. We think the words of the statute fix an ascertainable standard of guilt and are not so vague as to leave a person of ordinary intelligence in doubt as to the nature of the acts condemned. Cf. *Glickfield* v. *State*, 203 Md. 400, and *Blake* v. *State*, 210 Md. 459.

Since we disagree with the lower court in its holding that Chapter 18 violated Sec. 15, Art. III, of the Maryland Constitution, we must reverse the decree and restraining order appealed from, and we direct the Clerk of this Court to transmit the mandate forthwith, under Rule 876 b of the Maryland Rules, for the passage of a decree declaring Chapter 18 to be constitutional and valid.

DECREE REVERSED AND CASE REMANDED, COSTS TO BE PAID BY THE APPELLEES.

3. Judgment of Court of Appeals

(Filed Oct. 30, 1958)

IN THE CIRCUIT COURT FOR
SAINT MARY'S COUNTY, MARYLAND

Equity No. A-1126

LOREN L. LANDMAN, et al., *Plaintiffs*

v.

ROBERT MIEDZINSKI, Sheriff of Saint Mary's County, Maryland, et al., *Defendants*

Decree

In accordance with the Mandate and Opinion of the Court of Appeals of Maryland issued on the 15th day of

October, 1958, it is thereupon this 28th day of October, 1958, by the Circuit Court for St. Mary's County, Maryland, in Equity, ADJUDGED, ORDERED and DECREED:

(1) That Chapter 18 of the Acts of the General Assembly of Maryland be and the same is hereby declared constitutional and valid;

(2) That the injunction issued on the 21st day of July, 1958, in these proceedings be and it is hereby dissolved; and further

(3) That the Plaintiffs pay the costs of these proceedings.

JOHN B. GRAY, JR.,
John B. Gray, Jr.,
Chief Judge

PHILIP H. DORSEY, JR.,
Philip H. Dorsey, Jr.

B. STATUTES INVOLVED

1. Chapter 18, Laws of Maryland of 1958

"Section 1. * * * 246A. (a) It shall be unlawful for any person, firm, association or corporation to bet, wage or gamble at or to keep conduct, maintain or operate any game of chance, gaming table or coin operated gambling machine or device upon any vessel upon any of the waters within the State of Maryland, or upon any pier, wharf, building or other structure of any kind whatsoever which is built upon or over any of the waters of this State and which pier, wharf, building or other structure cannot be entered from the shore of the State of Maryland by a person on foot, and it shall further be unlawful for any person, firm, association or corporation to establish, keep, rent, use or occupy, or knowingly suffer to be established, kept, rented, used or occupied, any vessel upon any of the waters of the State of Maryland, or any pier, wharf,

building or other structure of any kind whatsoever which is built upon or over any of the waters of this State and which cannot be entered from the shore of the State of Maryland by a person on foot, for the purpose of conducting, maintaining or operating any game of chance, gaming table or coin-operated gambling machine or device. This Section shall prevail despite the issue of any form of license or permit granted through or by any county, municipal corporation or other political subdivision of this State. Any person, firm, association or corporation violating the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than Two Hundred Dollars ($200.), or more than One Thousand Dollars ($1,000.), or imprisonment not to exceed one year for each such violation or may be both fined and imprisoned in the discretion of the court.

"(b) Nothing in this Section shall be construed to authorize the doing of any act which is otherwise prohibited by law.

"Sec. 2. And be it further enacted. That all laws and parts of laws presently in existence in the State of Maryland, which are inconsistent in any degree with the provisions of this Act, are hereby repealed to the extent of such inconsistency.

"Sec. 3. And be it further enacted, That this Act shall take effect June 1, 1958. * * *"

2. Annotated Code of Maryland, Art. 27, § 237 (1957)

§ 237. Keeping gaming table or place.

No person shall keep any gaming table, or any house, vessel or place, on land or water for the purpose of gambling. (An. Code, 1951, § 303; 1939, § 288; 1924, § 244; 1912, § 214; 1940, § 199; 1888, § 122; 1797, ch. 110; 1826, ch. 88, § 1; 1842, ch. 190, § 5; 1853, ch. 265, § 1; 1856, ch. 195, § 1.)

3. Laws of Maryland of 1951

a. Chapter 181:

AN ACT to repeal Chapter 32 of the Laws of Maryland passed at the Extraordinary Session of the General Assembly in 1947, and to enact in lieu thereof four new sections to Article 19 of the Code of Public Local Laws of Maryland (1930 Edition), title "St. Mary's County", to be under sub-title "Licenses," said new sections to be known as Sections 93A to 93D and to follow immediately after Section 93 of said Article, removing from the operation of Sections 288 to 307, inclusive, of Article 27 of the Annotated Code of Maryland (1939 Edition), title "Crimes and Punishment," sub-title "Gaming," the operation of certain coin operated gambling machines in St. Mary's County, and relating to the legalizing, licensing and regulating the operation of coin operated mechanical or electrical amusement and/or gambling devices or machines, and the distribution thereof in St. Mary's County, and providing for the distribution of funds derived from such licensing.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That Chapter 32 of the Laws of Maryland passed at the Extraordinary Session of the General Assembly in 1947, be and it is hereby repealed, and that four new sections of Article 19 of the Code of Public Local Laws of Maryland (1930 Edition), title "St. Mary's County", to be under sub-title "Licenses", known as Sections 93A and 93D, inclusive, and to follow immediately after Section 93 of said Article, be and they are hereby enacted in lieu thereof, to read as follows:

LICENSES

93A. Nothing contained in Article 27, Sections 288 to 307, inclusive, of the Annotated Code of Maryland (1939 Edition), title "Crimes and Punishments", sub-title "Gaming", shall be construed as prohibiting, penalizing or mak-

ing unlawful the keeping, maintenance, operation or distribution for operation, in St. Mary's County, by any person, firm or corporation, on and after December 9, 1947, of any mechanical or electrical amusement devices which require the insertion of a coin or token for their operation and AN which offer an award to the operator based in whole or in part upon chance or his skill, provided, that said mechanical or electrical amusement devices or machines are licensed by the person, firm or corporation who owns or operates the premises upon which said amusement devices are maintained for the use of the public as hereinafter provided in this sub-title. Provided, however, that any bona fide charitable or veterans' organization and any bona fide fire company may own and operate not more than five such devices for which no license fee shall be required where all the proceeds of such devices are devoted to the exclusive benefit of such organization or company and such devices are maintained solely in the club room or regular meeting place of such organization or company. And provided further, that any bona fide religious or volunteer firemen's organization may operate on not more than two dates in any calendar year up to ten such devices without license at any carnival or social where the proceeds of such devices are devoted to the exclusive benefit of such organization.

93B. The County Commissioners of St. Mary's County are authorized to impose upon such of the machines and devices described in Section 93A as they shall designate a gross-recepits tax in such amount as they shall prescribe upon the total income received from the operation of such machines and devices. The said County Commissioners are further authorized to impose, by Resolution, an annual license fee at not more than Fifty Dollars ($50.00) for each machine so designated, in addition to the said gross-receipts tax. Said County Commissioners are authorized to prescribe by regulation what persons or organizations shall be eligible to apply for such licenses and operate such

machines or devices, the form of application for such licenses, limitations upon the number of machines licensed for any one licensee, types of licenses, the period during which such licenses shall be effective, and other matters with respect to the operation, licensing and taxing of said machines by gross-receipts tax and license fees as aforesaid.

93C. The revenues derived from the taxes and fees imposed by Section 93B shall become a part of the general funds of St. Mary's County.

93D. If the County Commissioners of St. Mary's County shall determine that any licensee under this Act has permitted any such licensed machine or device to be operated or played by any person under sixteen years of age, said County Commissioners shall suspend all licenses of such licensee held under this Act for a period of not exceeding sixty days for his first such offense, and for any subsequent offense such licenses shall be revoked and such licensee shall not be eligible for another license for a period of not exceeding two years.

SEC. 2. *And be it further enacted,* That all Public General Laws and Public Local Laws inconsistent with the provisions of this Act be and they are hereby repealed to the extent of such inconsistency.

SEC. 3. *And be it further enacted,* That this Act shall take effect June 1, 1951.

Approved March 24, 1951.

b. Chapter 183:

AN ACT to repeal Section 84C-84G, inclusive, of Article 9 of the Code of Public Local Laws of Maryland (1930 Edition, as enacted by Chapter 678 of the Acts of the General Assembly of 1949), title "Charles County," subtitle "County Commissioners," and to enact in lieu thereof five new sections of said Article, to be known as Sec-

tions 84C-84G, inclusive, and to follow immediately after 84B of said Article, removing from the operation of Sections 288 to 307, inclusive, of Article 27, of the Annotated Code of Maryland (1939 Edition), title "Crimes and Punishment," sub-title "Gaming," the operation of certain coin operated gambling machines in Charles County, and relating to the legalizing, licensing and regulating the operation of coin operated mechanical or electrical amusement and/or gambling devices or machines, and the distribution thereof in Charles County, and providing for the distribution of funds derived from such licensing.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Sections 84C-84G, inclusive of Article 9 of the Code of Public Local Laws of Maryland (1930 Edition, as enacted by Chapter 678 of the Acts of the General Assembly of 1949), title "Charles County," sub-title "County Commissioners," be and they are hereby repealed, and that five new sections of said Article, to be known as Section 84C-84G, inclusive, and to follow immediately after Section 84B of said Article, be and they are hereby enacted in lieu thereof, to read as follows:

84C. (a). Nothing contained in Article 27, Sections 288 to 307, inclusive, of the Annotated Code of Maryland (1939 Edition), title "Crimes and Punishments," sub-title "Gaming," shall be construed as prohibiting, penalizing or making unlawful the keeping, maintenance, operation or distribution for operation, in Charles County, by any person, firm or corporation, on and after July 1, 1949, of any mechanical or electrical amusement devices which require the insertion of a coin or token for their operation and which offer an award to the operator based in whole or in part upon chance or his skill, provided that said mechanical or electrical amusement devices or machines are licensed by the person, firm or corporation who owns or operates the premises upon which said amusement devices

are maintained for the use of the public as hereinafter provided in this sub-title. Provided, however, that any bona fide charitable or veterans' organization and any bona fide fire company may own and operate not more than five such devices for which no license fee shall be required where all the proceeds of such devices are devoted to the exclusive benefit of such organization or company and such devices are maintained solely in the club room or regular meeting place of such organization or company. And provided further, that any bona fide religious or volunteer fireman's organization may operate on not more than two dates in any calendar year up to ten such devices without license at any carnival or social where the proceeds of such devices are devoted to the exclusive benefit of such organizations.

(b). No person or firm shall be granted a license hereunder unless such person or persons comprising the firm are shown affirmatively to be bona fide property owners in Charles County on January 1, 1951, or are registered voters in said County. No corporation shall be granted a license hereunder unless all officers, directors, and the holders of 90% of the stock of such corporation are shown affirmatively to have been individual property owners in Charles County on January 1, 1951, or shall be registered voters in said County.

84D. (a). Any person, firm or corporation who owns or operates, whether as owner, lessee or licensee, the premises upon which it is desired to maintain any amusement devices described in Sub-section (a) of Section 84C hereof, may obtain a license therefor upon application to the License Clerk of the County hereinafter provided for upon forms prescribed for that purpose by said clerk and upon payment of the prescribed annual license fee of $150.00 for each single unit machine having but one slot or receptacle for the insertion of a coin. Where the machine or device sought to be licensed is a multiple slot or "Console"

variety, having more than one receptacle for the insertion of coins, the applicant shall pay an additional fee of $25.00 for each additional slot or receptacle. Licenses for no more than three such machines, whether they be single or multiple slot machines, shall be issued to any one person, firm or corporation under this sub-section; provided, however, that this limitation shall not apply to licenses issued under sub-section (b) of this section, and provided further that if any person, firm or corporation held licenses under Chapter 678 of the laws of Maryland of 1949, in excess of three, on January 1, 1951, such licenses may be renewed from year to year. Applicants who own or operate hotels, summer resorts or any type of seasonal business and who are not open for business the entire year may obtain a "seasonal" license by the payment of a fee of $150.00 for each machine with a single slot or receptacle sought to be licensed up to and including ten machines and $75.00 for each additional machine over ten. For multiple slot or "console" machines the additional fee of $25.00 per slot shall be paid as prescribed by this sub-section. The payment of said fees shall authorize the owner or operator to maintain on such premises the licensed machines from May 1 to October 1 in any year.

(b). Any person, firm or corporation who does not desire to maintain and operate any such amusement devices but merely to sell or lease the same, may obtain a license therefor, provided such person, firm or corporation has the qualifications required of a licensee under sub-section (b) of 84C of this sub-title, upon application to the said License Clerk and upon the payment of an annual license fee of $2,000.00, which license shall only authorize such licensee to sell or lease such amusement machines or devices to licensees for the maintenance and operation of such amusement machines under a license authorized by this sub-title, except as authorized in sub-section (a) of this section.

(c). Said application shall be in writing under oath and shall set forth the name of the applicant, a description of

the premises where such amusement devices are sought to be maintained, a description of the amusement devices sought to be licensed, sold or leased and such other information as the said Clerk may require, and no applicant shall be eligible for the license provided in sub-section (b) above unless he shall have been a bona fide resident of Charles County for five years preceding the date of his application, and who shall have been a registered voter at the last preceding election, and unless said applicant shall state under oath that no other person, firm or corporation is financially interested in the business to be conducted by said licensee. Upon receipt of a properly executed application and upon receipt of the proper license fee, the said Clerk shall forthwith issue an appropriate certificate evidencing that such license is thereby issued and the required license fees are thereby paid and said certificate shall enumerate and list a number for each of the devices thereby licensed for said premises. At the time of issuing said certificate, the Clerk shall also issue a metal plate which shall have stamped thereon a number, corresponding to the number assigned to the device on the certificate, which metal plate thereafter shall be securely fastened to the amusement device in such a manner as will be visible. All machines or devices licensed hereunder shall be maintained and operated on the inside of the licensed premises only.

(d). Each distributor securing a license hereunder shall on or before the tenth day of each month report the name and address of every person, firm or corporation residing or having a place of business in Charles County, to whom any such amusement machine or device has been sold or leased by him during the preceding month.

(e). All licenses issued under this section shall expire on May 1 of each year. Each license fee shall be pro-rated to the month of issue, but no refund shall be allowed for ceasing to exercise the privilege of the license before expiration.

84E. The County Commissioners shall appoint a License Clerk who, prior to assuming office, shall execute a good bond, in the penalty of any amount which shall be fixed by the County Commissioners, for the faithful performance of his duties as license Clerk, and further conditioned that he shall well and truly account for and pay over to the person or persons or body corporate entitled thereto, any and all money coming into his possession as License Clerk, which bond shall be approved by the County Commissioners or a majority of them. The County Commissioners may require the License Clerk to give as surety in the bond required of him by this section one of the corporations authorized by the laws of this State to become surety on official bonds, provided that in such case the said County Commissioners shall pay the premium or charge for such suretyship. Said License Clerk shall serve at the pleasure of the said County Commissioners, at such hours as they shall reasonably designate; and shall issue all licenses provided for herein and collect all sums required to be paid therefor. Sums collected shall be deposited in such banks as said Commissioners shall designate, to the credit of the County Commissioners as County funds, to be disbursed as indicated.

(1) $2400.00 shall be paid to said License Clerk, and $3000.00 shall be paid to the License Inspector, hereinafter provided for, as annual compensation for their respective services, and an additional sum of $600.00 per year shall be paid to said License Inspector for his expenses. Proportionate parts of the payments provided for in this subparagraph shall be made bi-monthly.

(2) After payment of the above salaries, any additional funds received shall be disbursed annually as follows, the amounts listed being reduced pro rata in the event the funds received are insufficient to pay all in full:

(a) $13,000.00 shall be paid to the following fire companies, as follows:

$4000.00 to the La Plata Fire Dept.
$1500.00 to the Hughesville Fire Dept.
$1500.00 to the Waldorf Fire Dept.
$1500.00 to the Nanjemoy Fire Dept.
$1500.00 to the Indian Head Fire Dept.
$1500.00 to the Potomac Heights Fire Dept.
$1500.00 to the Fifth District Fire Dept.

(b) $1000.00 shall be paid to the Children's Aid Society for use in its work in Charles County.

(c) $8500.00 shall be placed in a "Charles County Library Fund" and used to equal any State Funds which may be available for the establishment and maintenance of free libraries in Charles County.

(d) $8000.00 shall be applied to a "Physicians' Memorial Hospital Fund" and distributed to said Hospital from time to time as deemed necessary by the County Commissioners and based on the needs of said Hospital.

(3) After payment of the above amounts, all additional funds received shall be applied by the County Commissioners to the reduction of the Charles County real estate tax, and to the reduction of any outstanding school bonds and interest thereon in such proportions as the County Commissioners in their discretion shall determine.

The County Commissioners shall appoint a License Inspector who shall serve at the pleasure of said County Commissioners, and shall perform such duties as the County Commissioners require in connection with the enforcement and administration of the provisions of Sections 84C-84G of this sub-title. It shall be the duty of the Inspector to make such investigations and conduct such examinations of the records of licensees as will satisfy him that the provisions of Sections 84C-84G are being fully complied with by said licensees.

84F. It shall be unlawful for any person, firm or corporation knowly to operate or permit the operation of any amusement machine or device authorized to be licensed under Sections 84C-84G of this sub-title or permit any such machine or device to be operated or played by any person under sixteen years of age or for such minor to operate such machine or device. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of $50.00 for the first offense and $100.00 for the second offense and shall also have his license revoked for such second offense, and he shall not be eligible to obtain, either directly or indirectly, another license for a two-year period following such revocation.

84G. Any person, firm or corporation violating any provision of this sub-title, other than Section 84F for which specific penalty is provided, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding $1,000.00 or by confinement in the House of Correction for a period not to exceed six months, or both fine and imprisonment in the discretion of the court, and shall have his license revoked, and he shall not be eligible to obtain, either directly or indirectly, another license for a two-year period following such revocation.

Sec. 2. *And be it further enacted*, That this Act shall take effect June 1, 1951.

Approved March 24, 1951.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 589

LOREN L. LANDMAN, ET AL.,
Appellants,

v.

ROBERT MIEDZINSKI, SHERIFF OF ST. MARY'S COUNTY, ET AL.,
Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, TO AFFIRM AND BRIEF IN SUPPORT THEREOF

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ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, TO AFFIRM

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, respectfully move this Honorable Court to dismiss the above entitled appeal or, in the alternative, to affirm the judgment of the Court of Appeals of Maryland on the ground that the appeal fails to present any substantial federal question.

OPINION BELOW

The opinion of the Court of Appeals of Maryland is reported in 218 Md. 3, 145 A. 2d 220.

STATEMENT

This is a direct appeal from the final judgment of the Court of Appeals of Maryland, dated October 15, 1958, holding Chapter 18 of the Acts of 1958 (Maryland Legislature) to be constitutional and valid. The judgment of the Court of Appeals of Maryland reversed a decree of the Circuit Court for St. Mary's County and ordered that court to enter a decree holding Chapter 18 constitutional and valid, which was entered on October 28, 1958.

House Bill No. 57 was passed by the General Assembly of Maryland at the 1958 session and signed into law as Chapter 18 by the Governor on March 6, 1958. Chapter 18 adds a new section to Article 27, Annotated Code of Maryland, and reads as follows:

> "246A. (a) It shall be unlawful for any person, firm, association or corporation to bet, wage or gamble at or to keep, conduct, maintain or operate any game of chance, gaming table or coin operated gambling machine or device upon any vessel upon any of the waters within the State of Maryland, or upon any pier, wharf, building or other structure of any kind whatsoever which is built upon or over any of the waters of this State and which pier, wharf, building or other structure cannot be entered from the shore of the State of Maryland by a person on foot, and it shall further be unlawful for any person, firm, association or corporation to establish, keep, rent, use or occupy, or knowingly suffer to be established, kept, rented, used or occupied, any vessel upon any of the waters of the State of Maryland, or any pier, wharf, building or other structure of any kind whatsoever which is built upon or over any of the waters of this State and which cannot be entered from the shore of the State of Maryland by a person on foot, for the purpose of conducting, maintaining or operating any game of chance, gaming table or coin operated gambling machine or device. This Section shall prevail despite the issue of any form

of license or permit granted through or by any county, municipal corporation or other political subdivision of this State. Any person, firm, association or corporation violating the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than Two Hundred Dollars ($200.), or more than One Thousand Dollars ($1,000.), or imprisonment not to exceed one year for each such violation or may be both fined and imprisoned in the discretion of the court.

"(b) Nothing in this Section shall be construed to authorize the doing of any act which is otherwise prohibited by law."

On May 21, 1958, a Bill of Complaint was filed by the Appellants, requesting the Circuit Court for St. Mary's County to determine and establish the constitutionality and validity of Chapter 18 and to enjoin the Appellees and all other law enforcement officers from enforcing such law when it was to take effect on June 1, 1958. A temporary restraining order was signed by the court, which restraining order was extended after an answer had been filed for the Appellants on May 28, 1958, and the case was set for hearing on June 13, 1958.

The Appellants contended that Chapter 18 of the Acts of Maryland of 1958 was invalid and unconstitutional for the following reasons:

1. That it was enacted in violation of Section 15 of Article III of the Maryland Constitution.

2. That it violated the Fourteenth Amendment of the Constitution of the United States.

3. That it is unenforceable because it is ambiguous and inconsistent.

The Circuit Court for St. Mary's County, in their opinion, held that Chapter 18 was unconstitutional since it violated

Section 15 of Article III of the Maryland Constitution, but found that the Act did not violate the United States Constitution.

The Appellees appealed to the Maryland Court of Appeals from this judgment and the Maryland Court of Appeals, after advancing argument in the case, reversed the Circuit Court on October 15, 1958, and ordered that the case be remanded so that a decree holding the Act constitutional and valid could be entered. On October 20, 1958, the Appellants filed a motion for stay with the Maryland Court of Appeals, which was denied the next day. An Application for Stay was then immediately filed with this Court and was denied by the Honorable Chief Justice on October 25, 1958.

Thereafter, the Appellants retained new counsel who filed an appeal in this Court and filed an Amended and Supplemental Application for Stay in this Court on December 17, 1958, which stay was denied on December 22, 1958 by the Honorable Justice Brennan.

ARGUMENT

The decision of the Court of Appeals of Maryland is plainly correct and no substantial federal question is presented in the appeal. Prior to the enactment of Chapter 18, all forms of gambling were prohibited in Maryland (Article 27, Section 237, Annotated Code of Maryland (1957 Ed.)), except in four counties where certain types of gambling are lawful if licensed by the county. The 1958 statute here in controversy does not change this but prohibits gambling on any vessel upon the waters of the State of Maryland or upon any pier, wharf, building or other structure which is built upon or over the waters of this State and which structure cannot be entered from the shore of the State of Maryland by a person on foot.

The Appellants allege that they have been denied the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States because Chapter 18 of the Acts of 1958 discriminates against them without proper classification.

There is no question that the equal protection clause does not preclude the States from reasonable classification for the purpose of legislation. It is only when such attempted classification is arbitrary and unreasonable that the courts can declare it beyond the legislative authority. *Jeffrey Mfg. Co. v. Blagg*, 235 U.S. 571, 59 L. Ed. 364.

At the outset it is to be observed that it is elementary that every presumption is to be indulged in favor of the validity of a legislative enactment and that the courts will not invalidate a statute until this presumption is overcome beyond a reasonable doubt. "The presumption of reasonableness is with the State." *Salsburg v. Maryland*, 346 U.S. 545, 98 L. Ed. 281.

In *Screws v. United States*, 325 U.S. 91, 89 L. Ed. 1495, this Court pointed out that an unconstitutional construction is to be avoided if possible, stating:

> "This Court has consistently favored that interpretation of legislation which supports its constitutionality. Aschwander v. Tennessee Valley Authority, 297 U.S. 288, 30 L. Ed. 688; National Labor Relations Board v. Jones L. Steel Corp., 301 U.S. 1, 81 L. Ed. 893. * * *"

See *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 465, 89 L. Ed. 1725, 1737; *Carmichael v. Southern Coal and Coke Co.*, 301 U.S. 495, 510, 81 L. Ed. 1245, 1253.

In *Metropolitan Casualty Insurance Co. v. Brownell*, 294 U.S. 580, 584, 79 L. Ed. 1070, 1072, Justice Stone said:

> "It is a salutary principle of judicial decision, long emphasized and followed by this Court, that the bur-

den of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless, viewed in the light of facts made known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators. A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it. Rast v. Van Deman & L. Co., 240 U.S. 342, 357, 60 L. Ed. 679, 687, 36 S. Ct. 370, L.R.A. 1917A, 421 Ann. Cas. 1917B, 455; State Tax Comrs. v. Jackson, 283 U.S. 527, 537, 75 L. Ed. 1248, 1255, 51 S. Ct. 540, 73 A.L.R. 1464, 75 A.L.R. 1536."

In *Fort Smith L. & T. Co. v. Board of Imp. of Paving Dist.*, 274 U.S. 387, 71 L. Ed. 1112, it was held that a street railway company was not deprived of the equal protection of the laws where it was required to pay a State paving assessment which was not imposed upon companies operating in other municipalities. The Court enumerated various conditions which it assumed might exist which would justify the discrimination, and said at page 392 of 274 U.S.:

"* * * We may not assume in the absence of proof that such differences do not exist. Erb v. Marasch, 177 U.S. 584, 586, 44 L. Ed. 897, 898, 20 Sup. Ct. Rep. 819; Middleton v. Texas Power & Light Co., 249 U.S. 152, 158, 63 L. Ed. 527, 531, 39 Sup. Ct. Rep. 227; Swiss Oil Corp. v. Shanks, 273 U.S. 407, ante, 709, 47 Sup. Ct. Rep. 393.

"There are no facts disclosed by the record which would enable us to say that the legislative action with which we are here concerned was necessarily arbitrary or unreasonable or justify us in overruling the judgment of the state court that it was reasonable. Durham Pub. Serv. Co. v. Durham, supra, 154 (67 L. Ed. 585, 43 Sup. Ct. Rep. 290)."

The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 489, 99 L. Ed. 563, 573. The rules for testing a discrimination have been summarized as follows:

> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 79, 55 L. Ed. 369, 377, Ann. Cas. 1912C, 160. See *Morey v. Doud*, 354 U.S. 457, 1 L. Ed. 2d 1485.

The Maryland Court of Appeals in *Salsburg v. State*, 201 Md. 212, 221, 94 A. 2d 280, aff. 346 U.S. 545, 98 L. Ed. 281, followed this rule in holding:

> "* * * In so far as a statute grants privileges to or places burdens upon an individual, or limits his rights especially his right to engage in a particular business or occupation, such statute may be invalidated by an arbitrary or unreasonable classification or discrimination in respect to territory. *Herbert v. County Comm'rs. of Baltimore County*, 97 Md. 639, 644, 55 A. 376; *Watson v. State*, 105 Md. 650, 655, 66 A. 635; *Clark v. Harford Agricultural & Breeders' Assn.*, 118 Md. 608, 620, 85 A.

503; *Criswell v. State*, 126 Md. 103, 109, 94 A. 549. The classification must be reasonable and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and the law shall apply equally to all persons similarly situated within the territory described in the act. *Ocampo v. United States*, 234 U.S. 91, 34 S. Ct. 712, 715, 58 L. Ed. 1231; *Royster Guano Co. v. Commonwealth of Virginia*, 253 U.S. 412, 40 S. Ct. 560, 64 L. Ed. 989; *Ft. Smith Light & Traction Co. v. Board of Improvement*, 274 U.S. 387, 47 S. Ct. 595, 597, 71 L. Ed. 1112. The classification is presumed to be reasonable in the absence of clear and convincing indications to the contrary, and the person attacking the classification has the burden of showing that it does not rest upon any reasonable basis but is essentially arbitrary. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 31 S. Ct. 337, 55 L. Ed. 369."

In *Arizona v. Double Seven Corporation*, 70 Ariz. 287, 219 P. 2d 776, 19 A.L.R. 2d 1007, the corporation was charged with violation of a statute requiring horsemeat slaughtering for human consumption to be done in an establishment separate and apart from other livestock, to be stamped and sold from separate compartments. The constitutionality of the statute was raised before the court. The court said:

> "The burden of proof as to the constitutionality of a statute rests upon the defendant who appeals its unconstitutionality * * * Every reasonable doubt is to be resolved in favor of the constitutionality of legislative enactments and before a statute be declared unconstitutional it should clearly appear that it cannot be upheld by any reasonable intendment or presumption."

Under Chapter 18 of the Acts of 1958, all persons in the State of Maryland are affected exactly alike in respect to conducting gambling upon any pier, wharf, building or other structure of any kind whatsoever which is built upon

or over any of the waters of the State, which cannot be entered from the shore of the State of Maryland by a person on foot. The Act does not distinguish between one person and another, but makes it a crime for anyone to commit the forbidden acts. All persons similarly situated in the State are affected by Chapter 18 in exactly the same manner; there is no discrimination. The Act does make a distinction between places of business on the mainland or on piers, wharves or vessels adjacent thereto, and piers, wharves or vessels on the water of the State which cannot be reached on foot from the shore of Maryland, but an Act need not be territorially equal as long as it applies equally to all persons similarly situated within the territory described in the Act. However, we submit that such classification, if it is a classification, is reasonable in that the latter locations are more difficult to police, and further that in regard to the present case, they infringe upon the policies of the neighboring Commonwealth of Virginia.

In considering the constitutional safeguards, the courts must give regard to the principle that the State may regulate and restrict the individual whenever it is essential to protect the public safety, health or morals. If there is some reasonable basis, however slight, for a classification, then it must be permitted to stand. The classification made by Chapter 18 was reasonably related to the object sought to be achieved by the Maryland Legislature in the exercise of its police power. The location of gambling devices upon or over waters which cannot be reached from the shores of Maryland by a person on foot make it quite difficult to police and supervise the operation thereof by the proper State of Maryland and county authorities. It necessitates a long trip by land or the use of boats, neither of which are convenient for the policing of the devices. The gambling business is of such a nature that it is a necessary and proper subject of regulation under the State's police power.

In *Maryland Coal & Realty Co. v. Bureau of Mines of State*, 193 Md. 627, 69 A. 2d 471, the Court of Appeals of Maryland had before it the strip mining act of the laws of 1947, which act was held to be unconstitutional because it discriminated between operators of coal mines in Garrett County and those in Allegany County, Maryland. However, the Court said, in order to justify the State in interposing its authority for the public welfare, it must appear first that the interest of the public generally, as distinguished from the members of a particular class require such interposition; and second, that the means adopted are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individual citizens. The design and purposes of the act have a real and substantial relation to the police power. The court again pointed out that it is not the purpose of the equal protection clause to take from the State the power to classify the subjects of legislation. It is only when such attempted classification is arbitrary and unreasonable that the court can declare it beyond the authority of the Legislature.

The Court of Appeals quoted from the case of *United States v. Carolene Products Co.*, 304 U.S. 144, 82 L. Ed. 1234, where the Supreme Court said:

> "The Fifth Amendment has no equal protection clause and even that of the Fourteenth applicable only to the states, does not compel their legislatures to prohibit all like evils, or none. A legislature may hit at an abuse which it has found even though it has failed to strike at another. * * *"

It is submitted that Chapter 18 is a valid exercise of the police powers of the State and operates alike upon all persons and property under the same circumstances and conditions, and is reasonably related to the object to be achieved by the Legislature.

The Appellants admit in their Brief, page 14, that the complaint did not "in haec verba" refer to the due process clause nor did the trial court or the Court of Appeals rule on this ground. However, the Appellants allege that Chapter 18 violates their rights under the due process clause of the Fourteenth Amendment. They allege that the statute deprives them of their liberty to engage in a lawful business and destroys the property they have invested in the business.

This Court, in *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 99 L. Ed. 563, stated that "the day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." See *Nebbia v. New York*, 291 U.S. 502, 78 L. Ed. 940, 54 S. Ct. 505, 89 A.L.R. 1469; *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 81 L. Ed. 703, 57 S. Ct. 578, 108 A.L.R. 1330; *Olsen v. Nebraska*, 313 U.S. 236, 85 L. Ed. 1305, 61 S. Ct. 862, 133 A.L.R. 1500; *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 96 L. Ed. 469, 72 S. Ct. 405.

Chapter 18 does not destroy the business property or the business of the Appellants, but rather, it simply prohibits the use of gambling devices which were only incidental to their business and does not discriminate, but is equal as to all coming within the purview of the statute.

It is submitted that Chapter 18 is not arbitrary and that the Appellant has not sustained the burden of showing that "it does not rest upon any reasonable basis." The Appellee has suggested a basis for the Act which is certainly reasonable.

CONCLUSION

It is respectfully submitted that, for the foregoing reasons, the Appellee's Motion to Dismiss the Appeal, or in the alternative to affirm the Judgment of the Court of Appeals of Maryland, should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1050

[illegible] LANGHAM et al.

v.

[illegible]

On Appeal From the Court of Appeals for the State of Maryland

BRIEF OF APPELLANTS IN OPPOSITION TO APPELLEES' MOTION TO DISMISS APPEAL OR AFFIRM

[illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 589

LOREN L. LANDMAN, et al., *Appellants*,

v.

ROBERT MIEDZINSKI, Sheriff of St. Mary's County, et al., *Appellees*.

On Appeal From the Court of Appeals for the State of Maryland

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BRIEF OF APPELLANTS IN OPPOSITION TO APPELLEES' MOTION TO DISMISS APPEAL OR AFFIRM

I.

AS TO APPELLEES' CONTENTION THAT CHAPTER 18 OF THE ACTS OF MARYLAND OF 1958 OPERATES ALIKE UPON ALL PERSONS AND PROPERTY UNDER THE SAME CIRCUMSTANCES AND CONDITIONS, AND IS REASONABLY RELATED TO THE OBJECT SOUGHT TO BE ACHIEVED BY THE LEGISLATURE OF MARYLAND IN ENACTING THIS LEGISLATION

The appellees suggest that Chapter 18 of the Acts of Maryland of 1958 (hereinafter referred to as "the 1958 statute") is based upon a fair and substantial relation to some legitimate legislative objective. Further, the appellees contend that the legislative aims

which are to be fostered by Chapter 18 are twofold, namely:

> (1) to forbid establishments which, by virtue of their location, are more difficult to police; and
>
> (2) to forbid establishments which, though within the undisputed territorial limits of the State of Maryland, infringe upon the policies of the neighboring Commonwealth of Virginia.

But, the appellants have demonstrated that the record in this case is completely void of any legislative declaration or history, or any other extrinsic evidence, which would indicate that the reasons suggested by the appellees are, in fact, the actual reasons behind the Legislature's creation of the classification within which the appellants now find themselves. Nor does it appear from anything in the record that establishments comprised in that classification are, in fact, more difficult to police than others, or do, in fact, infringe upon any policy of the State of Virginia.

The appellants have shown that the lower courts' attribution of the two suggested objectives to the statute was merely the result of judicial conjecture—in clear contradiction to this Court's admonition that it is not the function of the judiciary "to conjure up possible situations which might justify the discrimination". *Mayflower Farms, Inc.* v. *Ten Eyck*, 297 U.S. 266, 274; see also, *Borden's Farm Products Co.* v. *Baldwin*, 293 U.S. 194.

While the appellants concede that a State may, upon any reasonable basis, discriminate between persons in the exercise of its inherent police power, the appellants submit that in the absence of a clear showing of legis-

lative intent it is not the function of the judiciary to indulge in conjecture as to possible reasons for the passage of legislation. When faced with a statute unsupported by legislative history or extrinsic evidence indicating the thinking which went into its enactment, the Court has no other alternative than to judge the act by its words.

Utilizing this approach, analysis of the 1958 statute demonstrates, at the very least, that the two alleged objectives cannot be inferred from the statute itself, because the statute (1) permits the operation of establishments which are more difficult to police than those it prohibits, and (2) prohibits the operation of establishments which could not possibly affect the interests of the State of Virginia.

In response to appellants' showing, however, that the 1958 statute does not clearly support the two aims which have been ascribed to it, the appellees answer, in their *Motion to Dismiss or Affirm*, by citing a number of decisions of this Court in support of the proposition that there is a presumption in favor of the validity of a legislative enactment, *Salsburg* v. *Maryland*, 346 U.S. 545; *Screws* v. *United States*, 325 U.S. 91; and that the burden of establishing the unconstitutionality of a statute rests on him who assails it. *Metropolitan Casualty Insurance Co.* v. *Brownell*, 294 U.S. 580.

It is equally well settled, however, that the presumption of unconstitutionality must fall when it is demonstrated that the statute in question offends the guaranty of equal protection of the laws. *Smith* v. *Cahoon*, 283 U.S. 553; *Skinner* v. *Oklahoma*, 316 U.S. 535. In order for a classification to be valid under

the equal protection clause of the Fourteenth Amendment it must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Magoun* v. *Illinois Trust and Savings Bank,* 170 U.S. 283; *Colgate* v. *Harvey,* 296 U.S. 404, 422, 423; *Morey* v. *Doud,* 354 U.S. 457.

The presumption of constitutional validity does not, *ipso facto,* answer the appellants' showing that the 1958 statute is repugnant to the equal protection clause of the Fourteenth Amendment in that the classification which it creates is purely arbitrary since it prohibits the continued operation of otherwise lawful establishments, while allowing the operation of similar establishments—built over the same waters—in the same counties of Maryland. *Smith* v. *Cahoon, supra; Hartford Steam Boiler Inspection & Insurance Co.* v. *Harrison,* 301 U.S. 459, 462; *Skinner* v. *Oklahoma, supra.*

II.

AS TO APPELLEES' CONTENTION THAT CHAPTER 18 DOES NOT VIOLATE APPELLANTS' RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Appellees assert that the 1958 statute does not destroy the business property or the business of the appellants. The State alleges further that the statute does not deprive the appellants of their liberty to engage in a lawful business, "but rather, it simply prohibits the use of gambling devices which were only incidental to their business". (*Motion to Dismiss,* etc., p. 11).

In support of these allegations the appellees refer to the decision of this Court in the case of *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 489, and the discussion therein by Mr. Justice Douglas of the power of a State to enact legislation which limits the activities of a particular class of persons. The Court, in that case, held, *inter alia*, that:

> [t]he equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. (At page 489).

While it is clear that the State has retained the power incidental to its policing requirements, as indicated by Mr. Justice Douglas, it is equally well settled that this power is not plenary and must be fitted within the framework of the constitutional guarantees of due process and equal protection of the law.

In the present case, the appellants have amply demonstrated in their *Jurisdictional Statement*, as well as in their original equitable bill filed in the court of first instance, that the operation of the 1958 statute deprives them, without compensation, of their business property in an immediate practical sense. The 1958 statute is not simply a prohibition against the use of gaming devices, as suggested by the appellees, but in practice has resulted in the total closing down of appellants' establishments. See the affidavits filed in support of appellants' motion for stay herein. In reality, rather than the gaming devices being merely incidental to the appellants' restaurant business, the latter were

merely incidental to the operation and maintenance of the gaming devices. The end result, therefore, of the enactment of the 1958 statute has been a literal taking of appellants' property without any compensation in any form. This is clearly not sanctioned by the law. *Seattle Title Trust Co.* v. *Roberge,* 278 U.S. 116; *Truax* v. *Corrigan,* 257 U.S. 312.

It is obvious that there is no foundation for appellees' contention that Chapter 18 deprives the appellants only of their liberty to engage in a particular kind of business activity, but not of their property. As pointed out by this Court in *Smith* v. *Texas,* 233 U.S. 630, 636, life, liberty, property and the equal protection of the law are so intimately entwined that the deprivation of the enjoyment of any one of these rights necessarily "lessens or extinguishe[s] the value of the other three". Chapter 18 not only deprives the appellants of their right to engage in their legitimate business, in violation of the constitutional guaranty of equal protection of the law, but also takes their property from them without compensation, in derogation of the due process mandate of the Fourteenth Amendment to the United States Constitution. *Truax* v. *Corrigan, supra; Reagan* v. *Farmers Loan and Trust Co.,* 154 U.S. 362; *Yick Wo* v. *Hopkins,* 118 U.S. 356.

CONCLUSION

For the foregoing reasons, taken together with those set out in appellants' *Jurisdictional Statement,* we submit that this Court should:

(1) deny appellees' motion to affirm the judgment below;

(2) deny appellees' motion to dismiss the appeal; and

(3) allow full argument on the questions which have been presented.

Respectfully submitted,

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February 3, 1959.